

ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD

IN THE MATTER OF
PETITION TO REPEAL EXISTING RULE
20.11.104 NMAC, *EMISSION STANDARDS
FOR NEW MOTOR VEHICLES*, AND
ADOPT PROPOSED REPLACEMENT
RULE 20.11.104 NMAC, *NEW MOTOR
VEHICLE EMISSION STANDARDS*

AQCB PETITION NO. _____

CITY OF ALBUQUERQUE
ENVIRONMENTAL HEALTH
DEPARTMENT,

PETITIONER.

**PETITION TO REPEAL EXISTING RULE 20.11.104 NMAC, *EMISSION STANDARDS
FOR NEW MOTOR VEHICLES*, AND ADOPT PROPOSED REPLACEMENT RULE
20.11.104 NMAC, *NEW MOTOR VEHICLE EMISSION STANDARDS***

The City of Albuquerque Environmental Health Department (“EHD”) hereby petitions the Albuquerque-Bernalillo County Air Quality Control Board (“Air Board”) to repeal existing rule 20.11.104 NMAC, *Emission Standards for New Motor Vehicles*, and adopt proposed replacement rule 20.11.104 NMAC, *New Motor Vehicle Emission Standards*. EHD’s Statement of Reasons in support of this Petition is attached hereto as Exhibit A. Existing rule 20.11.104 NMAC and proposed replacement rule 20.11.104 NMAC are attached hereto in legislative-edit format as Exhibits B and C, respectively.

Authority

The Air Quality Control Act, NMSA 1978, Sections 74-2-4 and 74-2-5 (as amended through Jan. 2021), the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 (“City Ordinance”), Sections 9-5-1-4 and 9-5-1-6, and Bernalillo County Code,

Article II, Sections 30-33 and 30-35, and 20.11.82 NMAC, *Rulemaking Procedures – Air Quality Control Board*, authorize the Air Board to adopt and replace regulations regarding air pollution.

Within 60 days of this Petition, the Air Board is required to determine whether it will hold a hearing on repealing existing rule 20.11.104 NMAC and adopting proposed replacement rule 20.11.104 NMAC. *See* NMSA 1978, § 74-2-6(A); City Ordinance, § 9-5-1-6(A); Bernalillo County Code, Art. II, § 30-35(a); 20.11.82.18(C) NMAC. However, as explained below, EHD is asking the Air Board to consider authorizing a hearing on the Petition at the Air Board’s February 9, 2022 meeting. EHD filed this Petition at least 15 days before the February 9, 2022 Air Board meeting. *See* 20.11.82.16(B)(4) NMAC.

Background

The Air Board adopted existing rule 20.11.104 NMAC during a joint hearing with the New Mexico Environmental Improvement Board in 2007. The Environmental Improvement Board adopted a nearly identical rule, 20.2.88 NMAC, *Emission Standards for New Motor Vehicles*, during the same hearing. Both rules adopted California’s new motor vehicle emission standards for model year 2011 and subsequent model year passenger cars, light-duty trucks, medium-duty passenger vehicles, medium-duty vehicles, and motor vehicle engines, as allowed by Section 177 of the Clean Air Act. *See* 42 U.S.C. § 7507. When the Environmental Improvement Board repealed 20.2.88 NMAC in 2013, the Air Board’s existing rule 20.11.104 NMAC became legally invalid and unenforceable. This occurred by operation of law because the Clean Air Act does not provide for political subdivisions to adopt or enforce their own vehicle emission standards when not part of a statewide program. *See* 42 U.S.C. § 7543(a). Existing rule 20.11.104 NMAC is also obsolete because California adopted more stringent standards a few years after the Air Board

adopted the rule. This resulted in the standards in existing rule 20.11.104 NMAC no longer being identical to California's standards, as required by the Clean Air Act. *See* 42 U.S.C. § 7507.

EHD's proposed replacement rule 20.11.104 NMAC adopts California's current new motor vehicle emission standards for model year 2026 and subsequent model year passenger cars, light-duty trucks, medium-duty passenger vehicles, medium-duty vehicles, and motor vehicle engines. Proposed replacement rule 20.11.104 NMAC is nearly identical to the New Mexico Environment Department's ("NMED") proposed rule 20.2.91 NMAC, *New Motor Vehicle Emission Standards*.¹ Together, the rules will create a statewide program for statewide compliance.

Pre-Petition Stakeholder and Public Outreach

EHD, in partnership with NMED, developed proposed replacement rule 20.11.104 NMAC over a period of eight months with extensive stakeholder engagement. In July through December 2021, EHD and NMED held numerous individual meetings with stakeholder groups and held three public listening sessions during which participants were encouraged to provide both verbal and written feedback. Additionally, prior to petitioning the Environmental Improvement Board, on October 27, 2021, NMED released a discussion draft of proposed rule 20.2.91 NMAC for the purpose of soliciting public and stakeholder input. After incorporating changes from that public comment period, on December 22, 2021, EHD released a discussion draft of proposed replacement rule 20.11.104 NMAC for the purpose of soliciting additional public and stakeholder input. EHD received a total of 21 written comments during the comment period. Feedback was collected from

¹ The requirements in proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC are the same, but, to the extent that the rules differ, the small differences are necessary to reflect the different jurisdictions of the Air Board/EHD and the Environmental Improvement Board/NMED.

auto dealers, auto makers, the agriculture industry, community advocates, environmental organizations, and over 100 individual New Mexicans during the public comment periods, public meetings, and individual stakeholder meetings. EHD and NMED revised proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC, respectively, based on the input they received.

On December 1, 2021, NMED petitioned the Environmental Improvement Board to adopt proposed rule 20.2.91 NMAC. The Environmental Improvement Board considered NMED's petition during its December 17, 2021 meeting and authorized a joint hearing with the Air Board beginning on May 4, 2022, pending the Air Board's concurrence with the joint format and date.

Hearing Date, Schedule, and Hearing Officer

EHD requests that, once again, the Air Board and the Environmental Improvement Board hold a joint hearing to consider proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC, respectively. Such a process will ensure that the rules, if adopted, do not contain conflicting provisions, so that the rules meet the identity requirements of Section 177 of the Clean Air Act. *See* 42 U.S.C. § 7507.

EHD requests that the Air Board consider this Petition during its February 9, 2022 meeting and agree to hold a joint hearing with the Environmental Improvement Board beginning on May 4, 2022.² Due to statutory public notice requirements, February 9, 2022, is the deadline for the Air

² The hearing may also be scheduled at such other time as the two boards mutually agree; however, on February 10, 2021, NMED is required to submit its public notice for publication in the New Mexico Register if the hearing is scheduled to begin on May 4, 2022. *See* Petition, n. 3. The notice must contain the hearing dates.

Board to act if a joint hearing is to take place on the date proffered by the Environmental Improvement Board.³

EHD estimates that two days will be needed to conduct the hearing in this matter, with an additional day for joint deliberation by both boards.

Due to the joint nature of the requested hearing and the complexity of the issues that are likely to arise in this rulemaking, EHD requests that the Air Board appoint an experienced administrative hearing officer to conduct the rulemaking proceeding, which will allow all Air Board members to devote their full attention to the substantive testimony and comment, and will help prevent potential procedural challenges to any final regulation adopted by the Air Board. *See* NMSA 1978, § 74-2-6(E); City Ordinance, § 9-5-1-6(E); Bernalillo County Code, Art. II, § 30-35(e); 20.11.82.11 NMAC.

WHEREFORE, EHD requests that the Air Board:

A. Include this Petition on the Air Board's February 9, 2022 meeting agenda with approximately 30 minutes for EHD to present on this Petition, with additional time for the Air Board to ask questions and deliberate;

B. Authorize a joint hearing with the Environmental Improvement Board and schedule it to begin on May 4, 2022 at 9 a.m. and continue through May 6, 2022, to consider the merits of this Petition;

³ Pursuant to 20.1.1.301 NMAC, the Environmental Improvement Board is required to provide notice to the public at least 60 days prior to a hearing. Notice must be published in the New Mexico Register, which is published by the Commission of Public Records twice a month. The last publication date that is at least 60 days prior to the proffered May 4, 2022 hearing date is February 22, 2022. The submittal deadline for publication in that edition of the register is February 10, 2022.

C. Appoint a hearing officer, in consultation with the Environmental Improvement Board, and authorize the hearing officer to manage the pre-hearing process, adopt procedural orders governing the proceedings, prepare any post-hearing recommendations for the Air Board at the Air Board's request, and take all measures necessary for the maintenance of order and for the efficient, fair and impartial consideration of issues arising in this matter; and

D. Until such time as a hearing officer is appointed, authorize the Air Board Chair, or her designee, to coordinate with the Environmental Improvement Board Chair, or her designee, to manage and resolve logistical matters for the hearing in this matter.

The Air Board is authorized to adopt the proposed regulatory changes under Air Quality Control Act, NMSA 1978, Sections 74-2-4 and 74-2-5(B)(1), Joint Air Quality Control Board Ordinance, ROA 1994, Section 9-5-1-4(B)(1), Bernalillo County Code, Article II, Section 30-33(b)(1), and 20.11.82.32 NMAC.

A proposed Notice of Hearing Determination and a proposed Pre-Hearing Order are attached hereto.

Respectfully submitted,

CITY OF ALBUQUERQUE
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CERTIFICATION

I hereby certify that on January 25, 2022, which is at least 15 days before any hearing or meeting at which the Albuquerque-Bernalillo County Air Quality Control Board (“Air Board”) will consider the document, an original and 15 copies of this Petition to Repeal Existing Rule 20.11.104 NMAC, *Emission Standards for New Motor Vehicles*, and Adopt Proposed Replacement Rule 20.11.104 NMAC, *New Motor Vehicle Emission Standards*, and its exhibits, were filed with the Air Board Hearing Clerk via hand delivery at:

Albuquerque-Bernalillo County Air Quality Control Board
Attn: Stephanie Apodaca, Air Board Hearing Clerk
Environmental Health Department
One Civic Plaza
Room 3023
Albuquerque, New Mexico 87102

Digital copies were sent as a courtesy to Stephanie Apodaca at seapodaca@cabq.gov.

As of January 25, 2022, the Air Board does not have legal counsel; thus, a copy was not delivered in accordance with 20.11.82.16(B)(2) NMAC.

The City of Albuquerque Environmental Health Department is the only party in this matter; thus, no other copies were served in accordance with 20.11.82.16(B)(3) NMAC.

By: /s/ Kelsea E. Sona
Kelsea E. Sona, Assistant City Attorney